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Public Prosecutor v Fong Chee Ping

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HIGH COURT (MIRI) — CRIMINAL CASE NO MYY-45–2/11 OF 2011
STEPHEN CHUNG JC
14 JUNE 2013

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Criminal Law — Murder — Defence — Prosecution relied on medical and circumstantial evidence — Defence of unsound mind due to abuse of ecstasy tablets — Accused heard voices in head — Whether there was motive to kill — Wounds and injuries sustained by deceased — Whether likely to cause death or sufficient in ordinary course of nature to cause death — Penal Code ss 84 & 302

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Criminal Law — Offences — Attempted suicide — Accused attempted suicide after murdering deceased — Whether accused of sound mind — Whether accused understood proceedings — Penal Code ss 84 & 302

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The accused was charged for two offences, namely, under ss 302 and 309 of the Penal Code ('Code'), for the murder of one Suzana Abol ('the victim') and attempted suicide, respectively. After receiving a phone call from a female person ('Helen'), the police found the victim with injuries, lying on the floor, in a room of a double-storey house. According to the pathologist ('PW10'), the

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victim suffered from external injuries and a stab wound at the upper gastric area which was the cause of death. The prosecution relied on medical and circumstantial evidence to prove that it was the accused who caused the death of the deceased and that the accused then attempted to commit suicide. Although there was no eyewitness who actually saw the accused causing the

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injuries resulting in the deceased's death, PW20, who rented a room from the accused, had testified that she had seen and heard the accused threatening the deceased and shortly after that, when she walked past the deceased's room, she saw the deceased lying on the floor in her room with injuries and blood on her. At the crime scene, the police recovered, inter alia, a *parang*, a knife and

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bloodstained underwear, shirt, belt and jeans. Based on a DNA analysis, the items belonged to the accused. DNA analysis from the *parang* showed that they were mixed profiles contributed by both the accused and the deceased. After his arrest, the accused was sent to Hospital Sentosa in Kuching for psychiatric observation and treatment. Dr Lau Kim Kah ('PW5') certified that the accused

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was capable of understanding the charge preferred against him and was also certified to plead his case. In the accused's defence, which was unsound mind due to abuse of ecstasy tablets, it was submitted that he was hearing voices in his head. The evidence showed that the accused killed the deceased because he was in love with her but apparently the deceased did not show any interest in him.

According to the accused, the voices which he heard were aware that he was in love with the deceased and the voices intended to torture the deceased after his death. Therefore, he decided to kill her first to spare her from being tortured by the voices.

Held, convicting the accused of the charges:

(1) The combined strength of each strand of evidence when twisted together to make a rope was sufficient and strong enough to sustain the finding that it was the accused who inflicted the injuries on the deceased which caused her death. The cumulative evidence, though circumstantial, irresistibly pointed to the one and only conclusion that it was the accused who had caused the injuries to the deceased resulting in her death (see para 40).

(2) From the wounds and injuries sustained by the deceased, the accused inflicted the injuries on the deceased with the intention of causing death or with the intention of causing such bodily injuries as he knew to be likely to cause death or caused them with the intention of causing bodily injuries and such bodily injuries were sufficient in the ordinary course of nature to cause death (see para 41).

(3) Notwithstanding the voices, which the accused blamed for making him kill the deceased, he had a motive to kill the deceased. Although at the material time the accused had a disturbed mind, the accused still had the ability to control his actions. The evidence showed that he was able to recollect the incident clearly and was able to explain his actions. There was ample evidence that at the material time he was aware of what he did and that what he did was wrong. Furthermore, at the end of the prosecution's case, there was no other medical evidence to the contrary to show that at the material time the accused did not know what he was doing or that he did not know what he did was wrong (see para 67).

(4) Although the accused was diagnosed to be suffering from substance induced psychosis, from the facts and circumstances of this case, the accused at the time of the offence had the mental capacity and was conscious of his actions. He had control over his cognitive faculties, he knew what he did was wrong and he knew what he did was contrary to law. The accused had failed on a balance of probabilities to prove that he was of unsound mind at the time he committed the offence under s 84 of the Code. The accused's defence did not raise any reasonable doubt as to his guilt (see paras 87–88).

[Bahasa Malaysia summary

Tertuduh dituduh untuk dua kesalahan, iaitu, di bawah ss 302 dan 309 Kanun Keseksaan ('Kanun'), masing-masing kerana membunuh seorang bernama Suzana Abol ('mangsa') dan percubaan membunuh diri. Selepas menerima

panggilan telefon daripada seorang wanita ('Helen'), polis menjumpai mangsa dengan kecederaan, terbaring di atas lantai, di dalam bilik sebuah rumah berkembar dua tingkat. Mengikut patologi ('PW10'), mangsa mengalam kecederaan luaran dan luka tikaman di bahagian atas gastric yang mana telah menyebabkan kematian tersebut. Pihak pendakwaan bergantung ke atas keterangan perubatan dan keadaan untuk membuktikan bahawa tertuduh yang menyebabkan kematian si mati dan bahawa tertuduh kemudiannya cuba untuk membunuh diri. Walaupun tidak terdapat saksi yang benar-benar melihat tertuduh mengakibatkan kecederaan yang menyebabkan kematian si mati, PW20, yang menyewa bilik daripada tertuduh, telah memberi keterangan bahawa dia mendengar dan melihat tertuduh mengugut si mati dan tidak lama kemudian, apabila dia melintasi bilik si mati, dia melihat si mati terbaring di atas lantai dalam biliknya dengan kecederaan dan berlumuran dengan darah. Di tempat jenayah, polis menemui, antara lain, parang, pisau dan pakaian dalam yang berdarah, baju, tali pinggang dan seluar jeans. Berdasarkan analisa, barang-barang dimiliki oleh tertuduh. Analisa DNA daripada parang menunjukkan bahawa terdapat profil bercampur yang disumbangkan oleh kedua-dua tertuduh dan si mati. Selepas penangkapannya, tertuduh dihantar ke Hospital Sentosa di Kuching untuk pemerhatian psikiatrik dan rawatan, Dr Lau Kim Kah ('PW5') mengesahkan bahawa tertuduh boleh memahami tuduhan yang dikenakan terhadapnya dan juga mengesahkan untuk memplidkan kesnya. Dalam pembelaan tertuduh, yang mana adalah sakit jiwa akibat pil-pil *ecstasy*, ia dihujahkan bahawa dia mendengar suara-suara dalam kepalanya. Keterangan menunjukkan bahawa tertuduh membunuh si mati kerana dia mencintainya tetapi jelas si mati tidak menunjukkan apa-apa minat kepadanya. Mengikut tertuduh, suara yang didengarnya menyedari yang dia mencintai si mati dan suara-suara tersebut berniat untuk menyeksa si mati selepas kematiannya. Oleh itu dia memutuskan untuk membunuh si mati terlebih dahulu untuk menyelamatkannya daripada diseksa oleh suara-suara tersebut.

Diputuskan, menyabitkan tertuduh terhadap tuduhan:

(1) Kekuatan gabungan setiap unsur keterangan apabila disimpulkan bersama untuk membuat tali adalah mencukupi dan kuat untuk mengekalkan dapatan bahawa tertuduhlah yang mengakibatkan kecederaan ke atas si mati yang menyebabkan kematiannya. Keterangan kumulatif, walaupun berdasarkan keadaan, dengan tidak dapat disangkal mengarahkan kepada satu-satu kesimpulan bahawa tertuduhlah yang menyebabkan kecederaan kepada si mati mengakibatkan kematiannya (lihat perenggan 40).

(2) Daripada luka dan kecederaan yang dialami oleh si mati, tertuduh mengakibatkan kecederaan ke atas si mati dengan niat membunuh atau dengan niat menyebabkan kecederaan badan kerana dia mengetahui akan menyebabkan kematian atau menyebabkannya dengan niat

menyebabkan kecederaan badan dan kecederaan badan sedemikian adalah mencukupi dalam sifat biasa menyebabkan kematian (lihat perenggan 41).

(3) Meskipun terdapat suara-suara tersebut, yang mana tertuduh mempersalahkannya kerana membuat dia membunuh si mati, dia mempunyai motif untuk membunuh si mati. Walaupun pada masa material mempunyai minda yang diganggu, tertuduh masih berupaya untuk mengawal tindakannya. Keterangan menunjukkan bahawa dia boleh mengingati kembali kejadian dengan jelas dan boleh menjelaskan mengenai tindakannya. Terdapat keterangan yang kukuh bahawa pada masa material dia menyedari apa yang dia buat dan apa yang dia buat salah. Selanjutnya, pada akhir kes pihak pendakwaan, tidak terdapat keterangan perubatan yang lain yang bertentangan untuk menunjukkan bahawa pada masa material tertuduh tidak mengetahui apa yang dilakukkannya atau bahawa dia tidak mengetahui apa yang dia buat salah (lihat perenggan 67).

(4) Walaupun tertuduh didianogsis mengalami psikosis disebabkan bahan, daripada fakta dan keadaan kes ini, tertuduh pada masa kesalahan tersebut mempunyai kapasiti mental dan sedar tehadap tindakannya. Dia mempunyai kawalan ke atas fakulti kognitif, dia tahu apa yang dia buat salah dan tahu apa yang dia buat bertentangan kepada undang-undang. Tertuduh gagal atas imbangan kebarangkalian untuk membuktikan bahawa dia sakit jiwa pada masa dia melakukan kesalah di bawah s 84 Kanun. Pembelaan tertuduh tidak membangkitkan apa-apa keraguan munasabh kepada kebersalahannya (lihat perenggan 87–88).]

Notes

For cases on defence, see 4(1) *Mallal's Digest* (4th Ed, 2012 Reissue) paras 1480–1508.

Cases referred to

Abdul Razak bin Dalek v PP [2010] 4 MLJ 725; [2010] 6 CLJ 357, FC (refd)
Adam Aman, Re; Hoesin bin Ghani v PP [1958] 1 MLJ 229 (refd)
Chan Chwen Kong v PP [1962] 1 MLJ 307; [1962] 1 LNS 22, CA (refd)
Goh Yoke v PP [1970] 1 MLJ 63, FC (refd)
Idris v PP [1960] 1 MLJ 296; [1960] 1 LNS 40, CA (refd)
John a/k Nyumbei v PP [2007] 7 MLJ 206; [2007] 2 CLJ 509, CA (refd)
Juraimi bin Hussein v PP Mohd Affandi bin Abdul Rahman & Anor v PP [1998] 1 MLJ 537; [1998] 2 CLJ 383, CA (refd)
Kow Liang Tiang v PP [2011] 9 CLJ 172, CA (refd)
Krishna Rao a/l Gurumurthi v PP and another appeal [2009] 3 MLJ 643; [2009] 2 CLJ 603, FC (refd)
Lee Ah Seng & Anor v PP [2007] 6 MLJ 1; [2007] 5 CLJ 1, FC (refd)
Looi Kow Chai & Anor v PP [2003] 2 MLJ 65; [2003] 1 CLJ 734, CA (refd)

A *PP v Abdul Rahim bin Abdul Satar* [1990] 3 MLJ 188, HC (refd)
PP v Chong Chai [2006] 3 MLJ 612, HC (refd)
PP v Ismail bin Ibrahim [1998] 2 CLJ 213, HC (refd)
PP v Misbah bin Saat [1997] 3 MLJ 495, HC (refd)
B *PP v Muhamad Suhaimi Abdul Aziz* [2004] 1 CLJ 378, CA (refd)
PP v Selvaraju Mudaliar a/l Kalliparamal [2006] 3 MLJ 784; [2005] 8 CLJ 534, HC (refd)
PP v Zainal Abidin Mohd Zaid [1993] 1 CLJ 147, HC (refd)
Rajagopal v PP [1977] 1 MLJ 6, FC (refd)
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Legislation referred to

Criminal Procedure Code ss 180, 182A, 343(iii), 425
Evidence Act 1950 s 105(a)
Penal Code ss 84, 299, 300, 302, 309
D

Yaacub bin Chik (Senior Federal Counsel, Attorney General's Chambers) for the prosecution.
Sheikh Rajjish Ahmad (Shad & Partners) for the accused.

E **Stephen Chung JC:**

[1] The accused is charged for two offences as follows:

F *First Charge:*

Bahawa kamu pada 29.03.2011 jam lebih kurang pukul 6:00 pagi bertempat di Bilik Sewa, No 13, Lot 232, Jalan Hokkien, Miri di dalam Daerah Miri, di dalam Negeri Sarawak, telah membunuh Suzana Abol (P), (KPT: 871012-13-5310), dan dengan itu kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah
G Seksyen 302 Kanun Keseksaan.

Second Amended Charge:

Bahawa kamu pada 29.03.2011 jam lebih kurang pukul 11.45 pagi bertempat di
H No 13, Lot 232, Jalan Hokkien, Miri, di dalam Daerah Miri, di dalam Negeri Sarawak, telah cuba membunuh diri dengan perbuatan iaitu mengelar leher sendiri dan menikam perut sendiri dan dengan perbuatan kamu tersebut telah melakukan suatu kesalahan yang boleh dihukum di bawah Seksyen 309 Kanun Keseksaan.

I **[2]** After his arrest, the accused was referred to Miri Hospital for medical treatment and observation. On 12 April 2011, he was sent by Miri Hospital to Hospital Sentosa in Kuching, which is a psychiatric hospital, for psychiatric observation and treatment. Therefore a duty was imposed on the court to determine whether the accused was fit to stand trial.

[3] The accused was certified, via a certificate dated 13 June 2011 by Dr Lau Kim Kah (PW5) of Hospital Sentosa, to be capable of understanding the charge made against him and to follow court proceedings. He was certified to be fit to plead his case. This certificate, which is marked as 'C', is receivable in evidence under s 343(iii) of the Criminal Procedure Code ('CPC'). Both the prosecution and defence counsel did not challenge this certificate nor the accused's fitness to stand trial and to plead to the charges. As the accused was certified fit to stand trial, the trial proceeded: see *Public Prosecutor v Misbah bin Saat* [1997] 3 MLJ 495, *Public Prosecutor v Zainal Abidin Mohd Zaid* [1993] 1 CLJ 147.

[4] The duty of a judge, sitting alone, at the close of the case for the prosecution, is to determine as a trier of fact whether the prosecution has made out a prima facie case against the accused person. The judge must subject the evidence of the prosecution to a maximum evaluation: *Looi Kow Chai & Anor v Public Prosecutor* [2003] 2 MLJ 65; [2003] 1 CLJ 734.

[5] In respect of the first charge, culpable homicide and murder are defined in ss 299 and 300 of the Penal Code respectively. In order to establish a prima facie case under s 302 of the Penal Code, the prosecution had to prove (a) the death of Suzana Abol (the deceased); (b) that the deceased died as a result of injuries sustained by her; (c) that the injuries of the deceased which resulted in the deceased's death were caused by the acts of the accused; and (d) in inflicting the injuries upon the deceased, the accused either caused them with the intention of causing death, or caused them with the intention of causing such bodily injuries as the accused knew to be likely to cause the death of the deceased, or caused them with the intention of causing bodily injuries and such bodily injuries were sufficient in the ordinary course of nature to cause death, or caused them with the knowledge that the acts were so imminently dangerous that they must in all probabilities cause death and committed such acts without any excuse for incurring the risks of causing death or such injuries as aforesaid.

[6] The facts were as follows. On 29 March 2011, at about 6.55am, Cpl Clayton ak Sian (PW1), who was on duty at the Central Police Station, Miri, received a telephone call from a female person who identified herself as Cik Helen. The caller reported that a woman was found injured in a room at No 13, Lot 232, Jalan Hokkien, Miri. Sgt Zairustam bin Abdullah (PW17) went to the address as reported and found a female, with injuries and lying on the floor, in a room at the ground-floor of a two-storey house at the given address. There were blood on her and on the floor. She was subsequently identified as Suzana Abol (871012–13–5310). She was still alive and was taken to Miri Hospital for treatment.

[7] PW9 (Dr Chia Sheng Ching) testified that on 29 March 2011 he was

working from 8.00am at the Accident and Emergency Department (A&E), Miri Hospital. When PW9 first saw and examined Suzana Abol, she was unstable, partially unconscious and in a critical condition. On external examination, she had a 2 x 2cm stab wound in the upper abdomen and a laceration wound of 1.5cm over the right cheek. His medical team tried to stabilise her and she was given blood transfusion for resuscitation. After X-ray, they found that she had massive haemothorax and a chest tube was inserted for her. She was given lignocaine for local anaesthesia during the procedures. He testified that unfortunately Suzana Abol passed away and was pronounced dead at 11.30am on the same day.

[8] A post mortem was carried out on the deceased on 31 March 2011 at 9.00am at Miri Hospital mortuary by PW10 (Dr Jamil Dolkadir), a pathologist from the Sarawak General Hospital, Kuching. He was assisted by PW9 and Encik Zainul Abidin Jemin (PW11) who was a Pembantu Perawatan Kesihatan of Miri Hospital at the post mortem. The deceased was identified by her sister (PW2) and her parents who were present at the post mortem. A police photographer, Cpl Rozali Dollah (PW12), took photographs (exhs P2 [1-27]) at the post mortem. PW10 prepared a post mortem report which was tendered as exh P43.

[9] PW10 testified that on examination of the body of the deceased, he found the following external injuries:

(a) one stab wound at upper gastric area measuring 1.5cm long and 0.4cm wide;

(b) bruises at above lateral left eyebrow;

(c) bruises at left zygomatic area;

(d) bruises at upper back of neck;

(e) bruises at left shoulder;

(f) two linear abrasion at epigastric area;

(g) superficial cut wound at right face measuring 3.5cm long, 0.3cm deep and 0.2cm wide; and

(h) superficial cut wound at right lower ear measuring 4cm long, 0.3cm deep and 0.3cm wide.

[10] On opening up the body, PWIO found there was haematoma below the skin at the lower chest but no haemothorax and no haemoperitoneum was noted. There was haematoma over the anterior heart (over pericardium). He said that the anterior pericardium of the heart was penetrated by the stab wound at epigastric area measuring 1.5cm long. The right antrium of the heart

was also penetrated by the stab wound at epigastric area measuring 0.7cm long causing the right haemathorax and blood clots inside the pericardium. The myocardium and coronary arteries and major vessels were normal.

[11] On opening up the skull, PW10 said he found there was haematoma below the skin at right anterior temporal area and left occipital area. There was no intracranial haemorrhage and on cutting up the brain was normal. There was a hairline curve fracture of the skull at left posterior fossa measuring about 2cm in length, no other fracture was noted. PW10 testified that the cause of death was due to the stab wound at the epigastric area penetrating the atrium of the heart causing right haemathorax. Blood and stomach content specimen were taken and given to the police. A vaginal swab for spermatozoa analysis was also taken and given to police for investigation purposes.

[12] He testified that the stab wound at the upper gastric area measuring 1.5cm long and 0.4cm wide was the fatal wound which caused the death of the deceased. He said that this wound or injury was sufficient in the ordinary course of nature to cause the death of the deceased.

[13] The first issue, which was raised during the trial, for the consideration of the court is the identity of the accused person. The police and prosecution recorded his identity card (IC) number as 680702-60-5015 in the sanction and in the charge sheet but his IC number was recorded as 630702-60-501 in exh P40 which is a medical report prepared by PW5 and as 630702-60-5015 in exh D1 which is another medical report prepared by PW9. Learned defence counsel submitted that because of these discrepancies, there is a doubt in the identity of the accused and that the wrong person could have been charged for this offence.

[14] After the prosecution was alerted to the different IC numbers, it applied under s 425 of the CPC to recall PW5 and PW9, who prepared exh P40 and D1 respectively, to clarify the discrepancies. I allowed the prosecution's application to recall these two witnesses. PW9 had examined and treated the accused when he was admitted to Miri Hospital. PW5 had examined and treated the accused when he was admitted to Sentosa Hospital. They had earlier during the trial identified the accused sitting in the dock as the patient whom they had treated. I ruled that they should be given a chance to explain why the IC number stated in their respective report is different. This discrepancy was not pointed out or put to them when they were in the witness stand. I ruled that no prejudice or injustice would be caused to the accused person by recalling PW5 and PW9 to explain the IC number referred to by them. Their explanation would clear any doubt and was necessary to the just decision of the case: *Re Adam Aman; Hoesin bin Ghani v Public Prosecutor* [1958] 1 MLJ 229, *Public Prosecutor v Abdul Rahim bin Abdul Satar* [1990] 3 MLJ 188.

[15] PW9 was the doctor who treated the accused when he was brought to Miri Hospital by the police on 29 March 2011. The police prepared and handed over to PW9 a standard 'medical examination report' request when the accused was brought to the hospital for treatment. This report was marked as exh P42. PW9 said that the particulars in para or part 1 of the report including the IC number of the accused were filled in by the police. He filled in his examination findings in para or part 2 of the report. The IC number of the accused in P42 was correctly filled in.

[16] Subsequently PW9 was requested to prepare another medical report which was marked as exh D1. In this report he typed the IC number of the accused as 630702-60-5015. He explained that it was a typing mistake because when he prepared this report he did not have the identity card of the accused to refer to. He said he referred to the particulars of the accused as recorded in the hospital triage form kept in the hospital record office. He noted that the name of the accused was written as 'Ong Chee Ping' in the triage form. He was asked to and he again identified the accused as the patient whom he had treated when the accused was brought by the police to him for treatment on 29 March 2011.

[17] PW5 testified that he did not see the identity card of the accused when the accused was admitted to Sentosa Hospital. He said, when he prepared his report P40, he also did not have the identity card of the accused in order to confirm the correct IC number of the accused. PW5 said that he took the IC number of the accused from a detention order (exh P63) issued by the Miri Magistrate Court a copy of which was in the file of Sentosa Hospital. The IC number of the accused was recorded as 630702-60-5015 in P63 but he wrongly typed it as 630702-60-501. He explained that it was a typing mistake. PW5 was not able to confirm the correct IC number of the accused because he was never given a copy of the identity card. PW5 was again asked to identify the patient whom he had treated at Sentosa Hospital from 12 April 2011 to 13 June 2011 and he again identified the accused sitting in the dock. He explained he was easy to identify the accused because the accused did not have a right hand which he had lost during an accident.

[18] In fact PW5 had prepared another similar medical report dated 13 June 2011 on the accused and this was marked as 'C' at the commencement of the trial when the accused was certified fit for trial, the charges were read and his pleas were taken in respect of the two charges against him. The IC number of the accused was however typed as 630702-60-5015 by PW5. The defence counsel did not refer to this medical report nor complained that by virtue of this discrepancy that another person or that a wrong person had been charged for the offences in this case.

[19] The police had taken several photographs of the accused at the scene of

the crime showing the injuries sustained by the accused and these were included in the set of photographs marked as exh P44. Learned defence counsel had referred to some of these photographs of the accused to PW9 who had identified the accused in the photographs as the person whom he had treated at the hospital on that day.

[20] On the evidence before the court, there was no mistaken identity or mistaken identification of the accused person by PW5 and or by PW9. There was not any doubt and no such doubt had been created as to his identity or that another person had been charged. PW5 and PW9 had explained that the discrepancies in the IC number of the accused in the medical reports were due to their mistakes because at the times when they prepared their report they did not have the identity card of the accused to refer to. The evidence showed that they had identified the accused as the person whom they had separately treated at Miri Hospital and at Sentosa Hospital. PW21 and PW13 had also identified the accused as the person whom the police had arrested at the scene and as the person shown in some of the photographs in P44.

[21] Did the accused inflict the injuries that caused the death of the deceased? There was no eye witness who actually saw the accused causing the injuries resulting in the deceased's death. There was a witness (PW20) however who testified that she saw and heard the accused threatening the deceased and that shortly thereafter, when she walked past the deceased's room, she saw the deceased lying on the floor in her room with injuries and blood on her. The prosecution is relying on medical and circumstantial evidence to prove that it was the accused who caused the death of the deceased and that the accused then attempted to commit suicide.

[22] PW20 (Rosemina Ak Paing) stayed in a room, on the ground floor of the said house, together with her mother and boyfriend Rahim bin Mahari (PW18). Her mother rented the room from the accused and paid the monthly rental to the accused. PW20 and her mother had been renting the room since about five years ago. On the day in question, her mother was in Marudi.

[23] PW20 said that on that day she woke up at about 6.00am and went to the bathroom which was next to their rented room. After she came out from the bathroom, she saw the accused was sitting and lying on the grass at the back of the house. She said the accused looked weird, confused, as if he was drunk. She said she quickly went back to her room.

[24] While she was changing in her room, getting ready to go to work, she heard the voice of a female screaming. She went out to have a look. She saw the accused standing outside the deceased's room. She heard the deceased said 'Jangan bunuh saya, saya masih ada mak' but the accused replied 'Jangan tipu

saya.' PW20 said the accused was then holding a knife in his hand. She said the accused entered the deceased's room and she saw the deceased ran out from her room. Then she saw the deceased entered her room while the accused was still inside the room. She said she went back to her room.

[25] At about 7.00am, PW20 left her room to go to work. She had to walk past the deceased's room. She said the door to the deceased's room was open and she saw the deceased lying on the floor in the room with blood on her. Initially she said she left for work. Subsequently she said she went back to her room to tell her boyfriend, who was still sleeping in the room, of what she saw and to ask him to lock the door of the room.

[26] PW18, who was the boyfriend of PW20, worked as a DJ in a pub. He had been staying in the room with PW20 and her mother since he started working in the pub about one and a half years before the incident. During this one and a half years he had seen the accused in the house.

[27] He said that on 29 March 2011, at about 4.00am, when he got home from work, he met the accused at the house who tried to stop him from entering the house. He said the accused told him 'you are not staying here.' He told the accused that he stayed in the room at the back of the house, near to the toilet. He said the accused seemed to recognise him and let him pass.

[28] PW18 said that later that morning, before PW20 went to work, PW20 told him that there was a quarrel in one of the rooms in the house and that she saw the accused holding something that looked like a parang at the deceased's room. He said subsequently PW20 went back to the room and told him that she walked past the deceased's room and saw the deceased with injuries and blood on her in the room. He said he went back to sleep. Later PW20 telephoned him and reminded him to go to his parent's house and also to lock the door. He said he again went back to sleep and did not lock the door.

[29] PW18 said that the accused then kicked open the door of their room, entered the room and attacked him, uttering the words 'Mati Lu'. He said the accused stabbed him in the back with a knife. He got up to fend off the attack and struggled with the accused. He was able to seize the knife from the accused during the struggle and the accused then ran away. He said he telephoned his younger brother to send him to the hospital and he brought the knife with him in the car. The knife was subsequently handed over to PW17. It was tendered as exh P25B.

[30] The evidence showed that on 29 March 2011 at about 7.00am, after PW1 received the telephone call from Helen, PW1 informed PW17 of the information received. PW17 went to the address given in the report where he

found the door to a room, at the ground floor of the house, was open. He saw a female person lying on the floor in the room with bloodstains on her. He heard this female person saying 'sakit, sakit, sakit'. From a photograph shown to him, PW17 had identified this female person as the deceased in this case. PW17 said that a few minutes after he arrived at the address, some nurses in an ambulance arrived and attended to the injured female person in the room and brought her to Miri Hospital. PW17 said that he did not notice or see anyone else at the house when he was there. PW17 was subsequently instructed by ASP Zainan (PW21) to go to the hospital. At about 11.30am he was informed by PW9 that Suzana Abol had passed away and he informed PW21 of this.

[31] On being informed of the death of the deceased, PW21 gathered a team of police officers including ASP Ooi Jin Bing (PW13) to go to the said house at Hokkien Road. PW21 testified that the other police officers arrived at the house first and waited for him. When he arrived, he knocked on the door of a room at the groundfloor of the house but nobody opened the door. He tried to open the door and found that it was not locked. When he opened the door, he saw a male person in the room who tried to move to the back of the room. He said that they detained this person, brought him out from the room and asked him to sit on the floor, at the walkway on the ground floor of the house, next to the wall of the room of the deceased. Both PW21 and PW13 identified this male person as the accused person in this case.

[32] PW21 said that he then looked for clues and found one bloodstain outside the door of the accused's room and took a sample of this (exh P8B). He then entered the accused's room and found one hand phone (exh P9A), a parang (exh PUB) kept under a chair in the room, a man's underwear with bloodstains on it (exh P12B), a shirt with bloodstains on it (exh P13B), a pair of jeans with bloodstains on it (exh P14B), a bloodstain on the floor in the room (a sample of the bloodstain was tendered as exh P15B), a bloodstain on a sofa in the room (a sample was taken and tendered as exh P16B) and a belt with bloodstain on it (exh P18B). Based on the DNA analysis, the underwear, shirt, belt and jeans belonged to the accused. Based on the DNA the bloodstains on the floor and the sofa belonged to the accused (see the chemist report exh P39).

[33] PW21 said that there was no bloodstain detected on the parang but the handle and blade were swabbed for DNA analysis (exh PI OB). PW21 said that there were however bloodstains on the knife (P25B) and the handle and blade of the knife and were also swabbed for DNA analysis. According to exh P39, the DNA analysis of the swabs from the parang and the knife showed they were of mixed profiles contributed by at least two sources ie from the accused and the deceased. The nail clippings taken from the deceased (exh P34B) also had

bloodstains. DNA analysis of the nail clippings again showed that they were of mixed profiles and contributed by the accused and the deceased.

[34] The evidence showed that PW13 spoke with and interviewed the accused in Mandarin at the house. PW13 testified that before the interview he cautioned the accused that all statements given by the accused to him would be used in court and as evidence in the investigation of the case. He said the accused understood the caution. After the interview PW13 placed the accused under arrest and instructed Cpl Bayan to handcuff the accused.

[35] On the evidence presented by the prosecution before the court, the prosecution had established the identity and the death of Suzana Abol (deceased). The prosecution had established that the deceased died from the injuries sustained by her and that she sustained the injuries between 6.00am and 7.00am on 29 March 2011 while she was in her rented room at the said house. The prosecution had also established that the stab wound at the upper gastric area measuring 1.5cm long and 0.4cm wide was sufficient in the ordinary course of nature to cause the death of the deceased.

[36] The evidence showed that at about 6.00am on the day in question, PW20 saw the accused with a parang outside the deceased's room and threatened to hurt the deceased. PW20 had testified that she heard the deceased telling the accused 'Jangan bunuh saya, saya masih ada mak' but the accused replied 'Jangan tipu saya'. The evidence showed that at about 7.00am on that day, when PW20 walked past the room of the deceased on her way to work, she saw the deceased lying on the floor in her room, injured and with blood on her. The evidence showed that at about 7.00am the police received a telephone report about a female person who was found injured in her room in the said house. The evidence showed that this injured female person was brought to the hospital and attended to by PW9. PW9 said that the stab wound and cut wounds on the deceased were caused by sharp objects.

[37] The DNA analysis of the swabs taken from the parang and the knife showed that the profiles were mixed and contributed by at least two sources including those from the accused and the deceased. The DNA analysis of the nail clippings with bloodstains taken from the deceased also showed a mixed profiles and contributed by the accused and the deceased.

[38] The evidence showed that the accused had told PW5 that he had killed and injured a female in Miri who was a tenant in his house, staying in a room opposite the accused's room. He told PW5 that he was in love with the deceased. The interview of the accused by PW5 was voluntary. There was no evidence of any oppression, inducement, threat or promise made or given to the accused by PW5. There was no complaint by the accused or by the counsel

that it was not voluntary. There was also no complaint by the accused or by the counsel that the accused was oppressed, induced, threatened or promised by PW5 before, during or after the interviews: see *Krishna Rao a/l Gurumurthi v Public Prosecutor and another appeal* [2009] 3 MLJ 643; [2009] 2 CLJ 603.

[39] Learned defence counsel did not challenge or submit on the credibility of any of the prosecution witnesses which would raise or cast any doubt on their evidence or on the truth or the veracity of what they had said in court. There are usually discrepancies found in the testimony of a witness. The court has to determine whether the discrepancies are minor or material discrepancies and whether they would affect the truth of what the witnesses had testified in court. It would be wrong to say that just because a witness may have contradictions in his evidence or even told a lie on one or two points that his evidence should be totally rejected: *Lee Ah Seng & Anor v Public Prosecutor* [2007] 6 MLJ 1; [2007] 5 CLJ 1. In this case, there is no reason for them to lie and for me not to accept the evidence of the prosecution witnesses which I have referred to in this judgment.

[40] Based on the evidence before the court, I am satisfied that the combined strength of each strand of evidence when twisted together to make a rope was sufficient and strong enough to sustain the finding that it was the accused who inflicted the injuries on the deceased which caused her death. The cumulative evidence, though circumstantial, irresistibly pointed to the one and only conclusion that it was the accused who had caused the injuries to the deceased resulting in her death: *Chan Chwen Kong v Public Prosecutor* [1962] 1 MLJ 307; [1962] 1 LNS 22, *Idris v Public Prosecutor* [1960] 1 MLJ 296; [1960] 1 LNS 40, *Kow Liang Tiang v Public Prosecutor* [2011] 9 CLJ 172.

[41] From the wounds and injuries sustained by the deceased, the accused inflicted the injuries on the deceased with the intention of causing death or with the intention of causing such bodily injuries as he knew to be likely to cause death or caused them with the intention of causing bodily injuries and such bodily injuries were sufficient in the ordinary course of nature to cause death.

[42] In respect of the charge under s 309 of the Penal Code, the accused was charged for attempting to commit suicide by cutting his own neck and stabbing his own stomach. Section 309 provides that whoever attempts to commit suicide, and does any act towards the commission of such an offence, shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both. Suicide is not defined in the Penal Code. The *Concise Oxford Dictionary* defines it as the intentional killing of oneself.

[43] The medical report (exh P42 and D1), prepared by PW9 who treated

the accused at the hospital, showed that the accused sustained a 5cm x 3cm laceration wound over the right side of his neck, a 2cm x 1cm wound on the left side of the neck and a 3cm x 1cm laceration wound over the upper abdomen. These injuries can be seen from photographs No 39 to 42 of exh P44. Photographs 44 and 45 of P44 also showed a wound to his left wrist. All these wounds were minor and not life threatening. The accused told PW9 that these injuries were self-inflicted with a knife in an attempted suicide.

[44] The accused however told PW5 that he had ran off to the stadium, after he had caused the injuries to the deceased, where he cut his own neck and stabbed his own abdomen with some broken glasses found at the stadium because the voices told him to do so. He also told PW5 that he knew he could not kill himself because the glass was too small and not sharp enough.

[45] There was no doubt that the accused voluntarily inflicted the injuries on himself. He told PW5 and PW9 that he inflicted the injuries himself. The injuries were minor and what he did amounted to an attempt to commit suicide.

[46] The next question is whether at the material time the accused was insane pursuant to s 84 of the Penal Code. Learned defence counsel had at the commencement of the trial indicated that it would be the main ground of defence. In his well written submissions, it was the only issue raised.

[47] Section 84 provides that nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that what he is doing is either wrong or contrary to law. This section exempts a person found to be insane of any criminal responsibility. In the event he was insane, he could not be criminally responsible for both offences under ss 302 and 309 of the Penal Code with which he is charged.

[48] The law presumes every person to be sane and to possess a sufficient degree of reason to be responsible for his or her act unless the contrary is proved: *Public Prosecutor v Selvaraju Mudaliar a/l Kalliparamal* [2006] 3 MLJ 784; [2005] 8 CLJ 534, *Public Prosecutor v Chong Chai* [2006] 3 MLJ 612. The burden is on an accused person to prove the defence of insanity on a balance of probabilities: see s 105(a) of the Evidence Act 1950, *Juraimi bin Hussein v Public Prosecutor Mohd Affandi bin Abdul Rahman v Public Prosecutor* [1998] 1 MLJ 537; [1998] 2 CLJ 383, *Public Prosecutor v Ismail bin Ibrahim* [1998] 2 CLJ 213, *Rajagopal v Public Prosecutor* [1977] 1 MLJ 6.

[49] Where the defence of insanity is raised, it is incumbent on the court to consider two matters namely, whether the accused person has established that

at the time of committing the act he was of unsound mind and whether his unsoundness of mind was of such a degree as to make him incapable of knowing the nature of his act or that what he was doing was wrong or contrary to law: *John a/k Nyumbei v Public Prosecutor* [2007] 7 MLJ 206; [2007] 2 CLJ 509.

[50] In establishing insanity, a distinction must be drawn between legal insanity and medical insanity. Section 84 is concerned with legal insanity ie, one that impairs the cognitive faculties of a person so that he is incapable of knowing the nature of his act or that what he is doing is wrong or contrary to law: *Public Prosecutor v Muhamad Suhaimi Abdul Aziz* [2004] 1 CLJ 378, *John a/k Nyumbei v Public Prosecutor*.

[51] Learned defence counsel submitted that the accused was suffering from a severe mental disorder before, during and after the incident. He said that it was evident from the testimony of PW5. He submitted that the accused was of unsound mind at the material time, that he was hearing voices and these voices told him what to do, that he did not know what he was doing or that what he did was wrong. He also referred to the accused's demeanor in court during the trial ie that the accused was very quiet, was looking down at the floor all the time and was not following the trial proceedings.

[52] Before counsel invited the court to look at the demeanour of the accused in court, I had already been watching him during the trial. Although he was quiet and mostly looked at the floor during the trial, he was aware of his surroundings and appeared to be following or was aware of the proceedings in court because he was able to stand up and sit down on his own without being told or prompted when the trial commenced or adjourned during each day of the trial. His demeanour in court tied in with the findings of PW5 that the accused was a quiet person and kept to himself most of the time. This was also the testimony of PW20 that the accused was quiet and kept to himself in the house. His demeanour in court was only one of the factors to be taken into account by the court in deciding whether he was of unsound mind at the material times.

[53] The accused was admitted to Hospital Sentosa for psychiatric observation on 12 April 2011. He was attended to by PW5 who subsequently prepared the medical report which was tendered as exh P40. The report was based on observations, interviews and examinations carried out during his stay at the hospital. PW5 had also referred to the accused's background from the social report prepared by Hospital Sentosa and on a medical report from Miri Hospital.

[54] I shall set out the following paragraphs from the report P40:

Patient was unable to recall the date or the time of the incident but is aware that he was being sent to Hospital Sentosa because he had 'killed or injured a girl in Miri' and that the victim was a tenant in his house, staying in a room opposite his own room.

He claimed to be unwell then, and was hearing numerous voices. He had been hearing these voices for the past 2 to 3 months. While the voices were initially non specific and tolerable, it had become 'louder and unbearable' towards the last 1 to 2 weeks prior to the incident. The voices had been threatening him, either t cause him to go mad or kill him. He claimed that the voices told him that they (the voices) are aware that he is in love with the victim and that they (the voices) will later 'torture' the victim after his death.

On the day of the incident, he had decided that he will kill the girl first in order that she will be spared from being 'tortured by the people' (whose voices he was hearing). He had taken a 6-inche knife that he used for cutting vegetables from his kitchen and placed in on his belt on the left hip. He said he walked to the victim's room and while on the way there, had picked up a 'parang' which was in the hall. Upon reaching the victim's room, he had called out to her while knocking on the door three times. When the door was not opened, he kicked open the door.

He saw the victim, carrying a pot, 'as if she was preparing to wash rice'. He claimed that he heard the victim said something but he was unable to recall. He entered the room and pushed the victim, who then fell down on the floor. He then cut the victim a 'few times with the parang on her neck'. He could not recall whether there was any bleeding. He claimed the girl appeared dizzy and was lying on her side on the floor. He then turned her over on her back, pulled up her top and stabbed the victim on the chest once with the knife. He could feel the knife went into the chest. He then pulled out the knife.

When seen on the 12 April 2011, he recalled that he had attacked another person, a man before running away. However on the 15 April 2011, he claim not being able to recall whether there was any witness to what he had done. He was not sure what had happened to the knife. He said the knife 'was snatched away' from him initially but later changed to 'I left the knife in my room'.

He then ran off to the stadium. He recalled that the voices then told him that 'they knew what I had cut the girl's neck and they will not let me go'. The voices then told him to cut his own neck. He then cut his own neck with some broken glass and stabbed his abdomen with the broken glass. He claimed that 'I know I can't kill myself because the glass piece is too small and not sharp enough'. He then decided to go back home. Upon reaching the house, he could not recall if there was anyone else there. He went into his own room and 'just sat there till the police came'.

[55] From his interviews with the accused, PW5 found out that the accused had been taking ecstasy pills for more than ten years, taking between one to four tablets at a time which the accused bought at RM50 each. The accused also drank alcohol two to three times per week. On the morning of the incident, the accused had taken ecstasy tablets and was feeling 'a little high, a little calm' as PW5 put it in his report.

[56] From the interviews, examinations and observations carried out during the two months at the hospital, PW5 diagnosed the accused to be suffering from substance induced psychosis and intoxication from taking the ecstasy tablets. PW5 was of the opinion that at the time of the offence the accused was aware of what he was doing and that he was aware that what he was doing was wrong. PW5 had certified the accused to be capable of understanding the charges against him and to be fit to stand trial.

[57] The above account of what happened, when, how and why it happened as stated in the report P40 was narrated by the accused to PW5. The report showed that the accused was able to recollect and narrate the incident in detail to PW5, including where he took the knife and parang, explaining why he did it and explaining that the intensity of the voices he heard did not seem related to the number of ecstasy tablets he was taking. He was able to describe how he went to the deceased's room, called out to her while knocking on the door three times and kicked open the door when she did not open the door.

[58] The accused was also able to recall and describe how he stabbed the deceased in the chest once. He was aware that he was killing the deceased and he knew that the deceased would die when stabbed with the knife. He also told PW5 that he knew it was wrong to kill someone. The evidence also showed that there were exchange of words between the accused and the deceased. He was able to reply to the deceased by saying 'Jangan tipu saya'. All these indicated that he was a sane person: see *Abdul Razak bin Dalek v Public Prosecutor* [2010] 4 MLJ 725; [2010] 6 CLJ 357.

[59] The accused told PW5 that he never sought any treatment because he did not think that he was mentally unwell but believed that someone might have cast a charm on him.

[60] What the accused had said to PW5, and reported in P40 about what happened at the house early that day, had been corroborated by other evidence presented in court. PW20 had told the court that when she went to the bathroom at about 6 am she saw the accused sitting on the grass in the garden at the back of the house. She said the accused looked strange as if he was on drugs or intoxicated. When she was in her room, changing, prior to going to work, she heard the deceased screaming and she went out to see what happened. She said she saw the accused holding a knife in his hand outside the deceased's room. She heard the deceased begging the accused not to kill her. She heard the accused said 'Jangan tipu saya.' Obviously the accused was coherent, able to talk and talked with the deceased on that day at about 6.00am. He was able to and had threatened the deceased.

[61] The evidence showed that PW18 did not lock the door because PW18

said that he was still sleeping in his room when the accused came in and suddenly stabbed him. He got up, struggled with the accused and managed to take the knife from the accused. PW18's evidence corroborated what the accused had told PW5 that he attacked another person, a man, before running away and that the knife was snatched away from him by someone.

[62] The autopsy report of the deceased showed that there was one stab wound at the upper gastric area measuring 1.5cm long and 0.4cm wide and other superficial cut wounds. These confirmed the accused's account of the stab wound which he inflicted on the deceased.

[63] Although the accused was only admitted to Hospital Sentosa on 12 April 2011, nearly two weeks after the incident, and subsequently interviewed and examined by PW5, the accused spoke to and was interviewed by PW13 at the house shortly after the incident. During the interview he was calm and was able to understand and communicate with PW13. He was able to answer questions from PW13. The evidence showed that he did not answer or was able to decide not to answer some of the questions asked of him by PW13. He was able to relate what happened to PW13 so that he was placed under arrest after the interview.

[64] Shortly after the interview with PW13, the accused was brought to Hospital Miri for medical treatment. He was interviewed by PW9 who treated him. He was able to understand and communicate with PW9. He told PW9 that he lost his right upper limb in an accident. He also told PW9 that he had visual and auditory hallucination (see exh D1). Based on exh P42, he also told PW9 of his drug abuse.

[65] The two interviews or conversations that the accused had with PW13 and PW9, not very long after the incident, confirmed that the accused understood, able to relate what happened and knew what had happened earlier that morning at the house. At the material time he knew and understood what he had done and that what he did was wrong or contrary to law. These would support the findings of PW5 that at the material time the accused was aware of what he was doing and that he was aware that what he was doing was wrong.

[66] The evidence showed that the accused killed the deceased because he was in love with her but apparently the deceased did not show any interest in him. From exh P40, he denied he had any misunderstanding with the deceased. He said he liked the deceased but had never disclosed how he felt about her to the deceased. He claimed that the voices which he heard were aware that he was in love with the deceased. He said the voices intended to torture the deceased after his death. Therefore he decided to kill her first to spare her from being tortured by the voices. He blamed the voices for making

him kill the deceased. The evidence based on P40 showed that these voices or hallucinations were triggered or induced by the ecstasy tablets which he took that morning.

[67] Notwithstanding the voices, which he blamed for making him killed the deceased, he had a motive to kill the deceased. PW5 said that although at the material time the accused had a disturbed mind which was induced by the the tablets, the accused still had the ability to control his actions. The evidence showed that he was able to recollect the incident clearly and was able to explain his actions. There was ample evidence that at the material time he was aware of what he did and that what he did was wrong.

[68] The accused was 45 years old and single at the time of the offence. He stayed in the big wooden house which he partitioned into rooms and rented out to tenants. The deceased, PW18, PW20 and Cik Helen were some of his tenants. The accused used to work as a cashier in a local hotel but had stopped work sometime before the incident. He lost his right arm in a motor vehicle accident more than 10 years ago. His background showed that he was not suffering from any mental illness. He did not have any history of mental illness and he had never been treated for any mental or psychiatric illness prior to the incident.

[69] At the end of the prosecution case, PW5 was the only medical expert who had interviewed, observed and examined the accused and had given his opinion on the state of mind of the accused at the material time of the incident. PW5 came to the diagnosis that at the material time the accused knew what he did and knew that what he did was wrong. There was ample evidence to support PW5's opinion. As stated above, his opinion was corroborated by other evidence before the court.

[70] At the end of the prosecution case, there was no other medical evidence to the contrary to show that at the material time the accused did not know what he was doing or that he did not know what he did was wrong.

[71] After subjecting the evidence of the prosecution to a maximum evaluation, the court found that the prosecution had made out a prima facie case against the accused on both charges. I called upon the accused to enter his defence to both charges: see s 180 of the CPC.

[72] The accused called four witnesses to testify in his defence, including the accused himself. The accused testified that he was born in Brunei and is now 45 years old and single. He has an elder brother in Brunei, an elder brother in Singapore and a younger sister in Kuala Lumpur. He stayed in the house at No 13, Jalan Hokkien, Miri, which belonged to his late father. There were 18

rooms in the house which he rented to tenants. Prior to the incident, the accused was working as a cashier at Muhibah Inn, Miri. He said that he had been consuming alcohol regularly for about 20 years and he took drugs (amphetamine) once in two weeks for about ten years. He lost his right hand in an accident about 13 years ago.

[73] The accused testified that he could not sleep the night before the incident because he heard some voices calling him. He said he sat there and heard the voices. He said he did not have any money to buy the drugs so he decided to take 10 Panadol tablets hoping that he could sleep but it was not effective to make him sleep. He was asked and he said that he did not take any drugs or alcohol on that night or on the day of the incident. The accused said that the voices started to scold him and also told him many stories but he was not able to explain the voices.

[74] He testified that he could not recall what he did in the early morning on 29 March 2011. He was asked by his counsel and he said that he was lying on the grass at the back of the house, threw away his false teeth and he went in and out of the kitchen. He said the voices told him to do that. After that he took a knife and slashed Suzana Abol. He was asked why he did that to her and he said the voices showed him in his mind the picture of Suzana Abol being abused and the voices told him that she would continue to suffer if she did not die. He said he took the knife and killed her. He said he could not control what he did at that time due to the voices he was hearing. He said he would not have done that if he did not hear those voices which disturbed him. The accused said that the voices then told him to go to the stadium, told him to pick up a piece of glass from the ground at the stadium which he used to cut his throat and the voices then told him to go home. The accused said that he stabbed a person at the house because he just wanted to DW2 (Dr Rajinder Singh) is a consultant psychiatrist and head of department at Hospital Permaisuri Bainun, Ipoh and was previously attached to Hospital Sentosa, Kuching as a psychiatrist. DW2 was requested to examine the accused and to give his opinion on the state of mind of the accused at the time of the incident. DW2 interviewed the accused at Lambir Prison, Miri on 19 March 2013 with the assistance of an interpreter (DW4). Prior to the interview, on 18 March 2013, he had interviewed the eldest brother (DW3) of the accused on the accused background. On 20 March 2013, he went through the medical record of the accused kept at Hospital Sentosa. DW2 then prepared his report which was tendered as exh D3.

[75] DW2 (Dr Rajinder Singh) is a consultant psychiatrist and head of department at Hospital Permaisuri Bainun, Ipoh and was previously attached to Hospital Sentosa, Kuching as a psychiatrist. DW2 was requested to examine the accused and to give his opinion on the state of mind of the accused at the time of the incident. DW2 interviewed the accused at Lambir Prison, Miri on

19 March 2013 with the assistance of an interpreter (DW4). Prior to the interview, on 18 March 2013, he had interviewed the eldest brother (DW3) of the accused on the accused background. On 20 March 2013, he went through the medical record of the accused kept at Hospital Sentosa. DW2 then prepared his report which was tendered as exh D3.

[76] Based on the interview, certain documents which were given to him and the medical reports of the accused, DW2 testified that the accused was abusing 'ecstasy' which was a type of amphetamine which could damage the cells in the brain thus causing disease of the mind characterised by psychotic symptoms and abnormal behaviour. He said the accused suffered from auditory and visual hallucinations, had delusions and aggressive behaviour.

[77] DW2 testified that just prior to the incident or offence, the accused was noted to be behaving in a bizarre manner and he was hearing voices telling him to kill the victim and also to harm himself. He said the accused was following the instructions of the voices and was acting on what these voices were telling him to do. The accused also told him that the accused saw a vision of the dead victim after the incident. DW2 said that according to the accused he was hearing voices for the past several days or weeks and these voices became more intense towards the time of the incident and even after the incident.

[78] DW2 gave his opinion that the accused was at the time of the offence suffering from amphetamine induced psychotic disorder with hallucinations. He testified that due to this disorder, the accused was not able to control himself and was under the influence of hallucinations. He was of the opinion that the accused did not know what he was doing at the time of the offence.

[79] DW3 is the eldest brother of the accused. He lived in Brunei and he used to visit the accused in Miri. He said he seldom visited the accused recently because the accused appeared to be losing patience and scolded him. He said the last time he visited the accused was when they went to visit their father's tomb for the Ching Ming festival in 2011 that is before the incident. He said on that day the accused looked different, was angry and refused to clean the tomb. He said the accused sometimes talked to himself, it was not the first time. He said he asked the accused to help him to clean the tomb but the accused refused, quarreled with him and was eager to go home and he did not know why. DW3 was asked and he said that he was not sure whether the accused was suffering mental problem.

[80] The defence submitted that the accused was of unsound mind at the time of the commission of the offence and was incapable of knowing the nature of his act or that what he was doing was either wrong or contrary to law. It was submitted that the burden on the accused to establish the defence of

unsoundness of mind was on a balance of probabilities, citing the case of *Goh Yoke v Public Prosecutor* [1970] 1 MLJ 63. Learned counsel had also cited many other authorities on insanity which have been referred to in this judgment. It was submitted that, based on the evidence at the end of the trial and on the authorities referred to, it was an irresistible conclusion that the accused was of unsound mind and should be acquitted of the charges made against him.

[81] The defence of the accused relied on the opinion of DW2 that the accused was under the influence of hallucinations (the voices) and acted upon the hallucinations. DW2 said that the accused therefore was not able to control himself and did not know what he was doing was wrong or contrary to law at the time of the offence (see exh D3). DW2 in his testimony agreed with the contents of PW5's report (exh P40), which he had studied including that the accused suffered from substance induced psychosis, except with PW5's opinion on the state of mind of the accused that the accused was at the time of the offence that he was aware of what he was doing and that he was aware that what he was doing was wrong. The prosecution submitted that the opinion of DW2 which differed from that of PW5 was not correct, should not be accepted and or should not be given any weight.

[82] Based on the medical report of PW9, the medical report of PW5 and the medical report of DW2, the accused had related to them that he had heard voices and had hallucinations over a period of time. Based on his background, the accused and his family did not have any history of mental illness but that the accused had consumed alcohol and drugs over a long period of time. Both PW5 and DW2 therefore came to a finding that the accused had suffered substance induced psychosis.

[83] It should be noted that the accused had been on anti-psychotic medication since he was referred to Hospital Sentosa and was mentally stable during the interview with DW2 on 19 March 2013. It should also be noted that his recollection of the incident described in DW2's report (exh D3) might be different from what he had said to PW5 in exh P40 due to the lapse of time. In D3, the accused said that after he ran back to his house from the stadium he saw the vision of the dead girl standing near her door. The voice then told him to kill others as well so he went to another room and saw a man sleeping there and slashed him lightly on the back. In P40, he told PW5 that he slashed the man with a knife and ran to the stadium.

[84] However he did not narrate to PW5, during the interviews with PW5, that he saw the vision of the deceased after the incident. During those two months at Hospital Sentosa, he did not tell PW5 about seeing the vision of the deceased nor did he tell PW5 that the voice told him to kill others as well. This

was never put to PW5. DW2 was cross-examined on these and he said that he was not sure whether it was an afterthought by the accused and whether the accused was lying to him.

[85] The accused told PW5 that he had taken ecstasy tablets on the morning of the incident but he told DW2 that he did not take any alcohol or drugs before the day or on the day of the incident. In his cross-examination, the accused said that the last time he consumed drugs was about a month ago and that the effect of the drugs on him only lasted six to seven hours after he had taken them. Obviously, his subsequent statements to DW2 and his testimony in court were different from what he had said to PW5. These appeared to be an afterthought and raised some doubts on his credibility.

[86] The evidence showed that the opinion of DW2 was based on one interview only of three hours with the accused on 19 March 2013, about two years after the incident on 29 March 2011, whereas PW5 had observed, examined and interviewed the accused at Hospital Sentosa over a period of two months before he gave his opinion on the state of mind of the accused in his report. Obviously PW5 had better insight on the state of mind of the accused. As stated above, there was ample evidence of PW20, PW9 and PW13 to support the findings of PW5 that the accused had the ability to control his actions, that he knew what he did was wrong and that what he did was contrary to law. For the reasons given in this judgment, I accepted the findings of PW5.

[87] Although the accused was diagnosed to be suffering from substance induced psychosis, from the facts and circumstances of this case the accused at the time of the offence had the mental capacity and was conscious of his actions. He had control over his cognitive faculties, he knew what he did was wrong and he knew what he did was contrary to law. I have considered the defence. I find that the accused had failed on a balance of probabilities to prove that he was of unsound mind at the time he committed the offence under s 84 of the Penal Code.

[88] Also, for the reasons given in this judgment, the accused's defence did not raise any reasonable doubt as to his guilt. I am satisfied beyond reasonable

A doubt as to the accused's guilt. I found the accused guilty of the two offences charged against him. I record a conviction against him in each of the two charges against him: s 182A.

Accused convicted of charges.

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Reported by Afiq Mohamad Noor

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